

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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Presentment Date and Time:  
December 27, 2007 at 12:00 noon

**NOTICE OF PRESENTMENT TO  
VACATE THE AUTOMATIC STAY**

In Re:

VAN E. JOHNSON

Debtor.

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Case No.: 07-45298-ess  
(Chapter 13)

Assigned to:  
Hon. ELIZABETH S. STONG  
Bankruptcy Judge

PLEASE TAKE NOTICE that an order will be presented for signature to the Honorable ELIZABETH S. STONG at Chambers, 271 Cadman Plaza East, Courtroom 3585, Brooklyn, NY 11201 on the 27th day of December, 2007. The proposed order will seek to vacate the automatic stay imposed by 11 U.S.C. §362 and §1322(b)(5) with regard to the premises commonly known as 128 Howard Avenue, Brooklyn, NY 11233; a copy of which order is annexed hereto.

If you have good reason to object to the granting of the proposed order, you must do so in writing and at least 5 business days before the order is to be signed, you must serve the undersigned and all other entities to whom this motion has been noticed, as indicated below, with a copy of your objections stating with the legal grounds and the facts which establish the reasons for your objections. The objections shall identify the motion to which they are addressed by name of moving party, date of the hearing, relief sought by the motion, and by title, caption, and index number of the case in which the motion is made. Within the same time you must also file with the clerk of the Court the original of your objections together with proof by affidavit, admission, or otherwise that copies have been properly served. If no proper objections are timely filed and served and if the judge is satisfied from the application that the moving party is entitled to the relief sought, the order may be signed without a hearing. If proper objections are timely filed and served, a hearing will be held before the Court at 271 Cadman Plaza East, Courtroom 3585, Brooklyn, NY 11201 on the 8th day of January, 2008 at 1:00 pm. If no objections are filed, the Court may sign the order without further proceedings, or may direct that the hearing be held notwithstanding the absence of objections.

DATED : November 30, 2007  
Westbury, New York

Yours, etc.  
STEVEN J. BAUM, P.C.  
Attorneys for Secured Creditor  
America's Servicing Company servicer for Lend  
America

By:     /s/ Dennis Jose      
Dennis Jose, Esq.  
Office and Post Address:  
900 Merchant's Concourse, Suite 412  
Westbury, NY 11590  
Telephone 716-204-2400

TO:

VAN E. JOHNSON  
128 Howard Avenue  
Brooklyn, NY 11233

Pro Se Debtor

MARIANNE DEROSA, ESQ.  
100 Jericho Quadrangle  
Suite 208  
Jericho, NY 11753

Chapter 13 Trustee

U.S. TRUSTEE  
Diana G. Adams, Esq.  
Office of the U.S. Trustee  
271 Cadman Plaza East  
Suite 4529  
Brooklyn, NY 11201

U.S. Trustee

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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**AFFIDAVIT**

In Re:

VAN E. JOHNSON

Debtor.

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Case No.: 07-45298-ess  
(Chapter 13)

Assigned to:  
Hon. ELIZABETH S. STONG  
Bankruptcy Judge

STATE OF NEW YORK   )  
COUNTY OF NASSAU   )   ss.

Dennis Jose, being duly sworn deposes and says:

1. I am an attorney duly licensed to practice law in the Courts of this State and in the United States Bankruptcy Court for the Eastern District of New York.
2. I submit the within Affidavit in support of the motion of America's Servicing Company servicer for Lend America ("Secured Creditor"), by its attorneys Steven J. Baum, P.C., moves to terminate the automatic stay in this case with respect to the real property commonly known as 128 Howard Avenue, Brooklyn, NY 11233 and states as follows:
3. Secured Creditor is the holder of a mortgage dated the 24th day of January, 2006 in the amount of \$281,200.00 secured by the premises commonly known as 128 Howard Avenue, Brooklyn, NY 11233 (the "Mortgaged Premises"). A copy of the Note and Mortgage is attached hereto as **Exhibit 'A'**.
4. On the 28th day of September, 2007 Debtor Van E. Johnson filed a Petition under Chapter 13 of Title 11 U.S.C. §101 et seq with this Court, and an Order for relief was duly entered.

5. The Note and Mortgage provide that the Debtor will be in default if he or she does not make full monthly payments on each due date. As of the 27th day of November, 2007, the Debtor has failed to make 2 post-petition payments in the amount of \$1,728.21 which represents the payments due the 1st day of October, 2007 through November, 2007 and has not cured said default. In addition, 2 post-petition payments due the 1st day of December, 2007 through January, 2008 will be due at the date this motion is heard.

6. That as of the 27th day of November, 2007, there was an unpaid principal balance owed on the Note and Mortgage in the sum of \$281,200.00, with interest thereon in the amount of \$36,041.46, plus late charges in the amount of \$414.72, plus escrow advances in the amount of \$1,607.75, for an estimated amount owing Secured Creditor in the amount of \$319,263.93. Interest on the unpaid principal balance will continue to accrue, and to protect its security in the Mortgaged Premises Secured Creditor may be required to make further advances for property taxes, insurance and related matters.

7. Secured Creditor is suffering immediate and irreparable injury and loss in that insufficient income is being received by it on the Note secured by the Mortgage to pay real estate taxes and hazard insurance and as each installment period passes and as advances are made, Secured Creditor is further exposed and the equity securing its interest in the Mortgaged Premises is further diminished to the point where it does not now nor will it have adequate protection for that security interest.

8. A copy of a proposed Order granting the relief sought by Secured Creditor is annexed hereto as **Exhibit 'B'**.

9. No prior application has been made for the relief requested herein.

**WHEREFORE**, Secured Creditor respectfully requests that an Order be granted terminating the automatic stay immediately as to Secured Creditor's interest in the Mortgaged Premises together with such other, further and different relief as the Court may deem just in this matter.

DATED: November 30, 2007  
Westbury, New York

Yours, etc.  
STEVEN J. BAUM, P.C.  
Attorneys for Secured Creditor  
America's Servicing Company servicer for Lend  
America

By:     /s/ Dennis Jose      
Dennis Jose, Esq.  
Office and Post Address:  
900 Merchant's Concourse, Suite 412  
Westbury, NY 11590  
Telephone 716-204-2400

Subscribed and sworn to before me  
this 30th day of November, 2007.

/s/ Corrine Martino  
Notary Public, State of New York  
No. 01MA6127980  
Qualified in Nassau County  
Commission Expires June 6, 2009